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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

13 NEC CORPORATION,
14 a Japanese Corporation,

Plaintiff,

v

17 HARRIS CORPORATION,
18 a Delaware Corporation.

Defendant.

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Page No.

**COMPLAINT FOR PATENT
INFRINGEMENT AND
DECLARATORY JUDGMENT AND
DEMAND FOR JURY TRIAL**

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COMPLAINT

1 Plaintiff NEC Corporation (“NEC”), by and through its attorneys, brings this action
2 seeking monetary damages and injunctive relief against Defendant, Harris Corporation (“Harris”),
3 to remedy Harris’s willful and wanton infringement and the harm caused thereby of seven United
4 States patents owned by NEC. NEC further seeks a declaratory judgment against four United
5 States patents allegedly owned by Harris. NEC, for its Complaint against Harris, alleges as
6 follows:

7 **PARTIES**

8 1. Plaintiff, NEC Corporation, is a corporation organized and existing under the laws
9 of Japan, with a principal place of business at 7-1, Shiba 5-chome, Minato-ku, Tokyo, Japan 108-
10 8001.

11 2. Defendant, Harris Corporation, is a corporation organized and existing under the
12 laws of Delaware, with a principal place of business at 1025 West NASA Boulevard, Melbourne,
13 Florida. Through its Microwave Communications Division in Redwood Shores, California, Harris
14 maintains offices and operations within this Judicial District.

15 **JURISDICTION AND VENUE**

16 3. This is an action arising under the patents laws of the United States. This court has
17 jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332(a), 1338(a)
18 and pursuant to 28 U.S.C. §§2201 and 2202.

19 4. Harris is doing business within the United States, including this Judicial District, by
20 selling and/or offering to sell its products directly or through other intermediaries in this Judicial
21 District and throughout the United States. Harris purposefully avails itself to this forum at least by
22 having the operational headquarters of its Microwave Communications Division in Redwood
23 Shores, CA.

24 5. Accordingly, this Court has personal jurisdiction over the parties, pursuant to Fed.
25 R. Civ. P. 4(k)(l)(A).

26 6. Venue is properly vested in this district pursuant to 28 U.S.C. §§ 1391(b) and (c)
27 and 1400(b).

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1 FACTUAL ALLEGATIONS

2 7. United States Patent No. 4,823,363 ("the '363 Patent"), entitled *Phase-Locked*
3 *Clock Regeneration Circuit for Digital Transmission Systems*, was duly and lawfully issued on
4 April 18, 1989. A true and correct copy of the '363 Patent is attached hereto as Exhibit A. NEC
5 is the current owner of all rights, title and interest in the '363 Patent.

6 8. United States Patent No. 4,965,536 ("the '536 Patent"), entitled *Quadrature*
7 *Amplitude Modulation System Using Digital Filters*, was duly and lawfully issued on October 23,
8 1990. A true and correct copy of the '536 Patent is attached hereto as Exhibit B. NEC is the
9 current owner of all rights, title and interest in the '536 Patent.

10 9. United States Patent No. 4,549,142 ("the '142 Patent"), entitled *Phase*
11 *Demodulator Including Variable Phase Shifter for Controlling Reference Carrier*, was duly and
12 lawfully issued on October 22, 1985. A true and correct copy of the '142 Patent is attached hereto
13 as Exhibit C. NEC is the current owner of all rights, title and interest in the '142 Patent.

14 10. United States Patent No. 4,961,190 ("the '190 Patent"), entitled *(1+N) Hitless*
15 *Channel Switching System*, was duly and lawfully issued on October 2, 1990. A true and correct
16 copy of the '190 Patent is attached hereto as Exhibit D. NEC is the current owner of all rights,
17 title and interest in the '190 Patent.

18 11. United States Patent No. 4,901,369 ("the '369 Patent"), entitled *Microwave*
19 *Transmitter/Receiver Apparatus*, was duly and lawfully issued on February 3, 1988. A true and correct
20 copy of the '369 Patent is attached hereto as Exhibit E. NEC is the current owner of all
21 rights, title and interest in the '369 Patent.

22 12. United States Patent No. 4,631,488 ("the '488 Patent"), entitled *QAM Demodulator*
23 *with Distortion Compensation*, was duly and lawfully issued on December 23, 1986. A true and correct
24 copy of the '488 Patent is attached hereto as Exhibit F. NEC is the current owner of all
25 rights, title and interest in the '488 Patent.

26 13. United States Patent No. 5,825,828 ("the '828 Patent"), entitled *Method and*
27 *Apparatus for Multi-level Quadrature Amplitude Modulation*, was duly and lawfully issued on
28 October 20, 1998. A true and correct copy of the '828 Patent is attached hereto as Exhibit G.

1 NEC is the current owner of all rights, title and interest in the '828 Patent.

2 14. During the course of negotiations between NEC and Harris in 2003 and 2004,
3 Harris has alleged that NEC's products have infringed and are infringing the following Harris
4 United States Patents Nos.: 5,910,965 ("the '965 Patent"), 6,188,277 ("the '277 Patent"),
5 5,742,646 ("the '646 Patent") and 5,828,699 ("the '699 Patent").

FIRST COUNT

(Infringement of the '363 Patent)

8 15. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
9 Complaint as though fully set forth herein.

10 16. NEC is informed and believes, and based thereon avers, that Harris has infringed
11 and continues to infringe the '363 Patent by manufacturing, marketing, using, selling, offering for
12 sale, distributing, assembling, installing and/or servicing in the United States its products
13 including, but not limited to, at least the MegaStar®, which embodies, or when used, practices one
14 or more claims of the '363 Patent and by otherwise contributing to infringement and inducing
15 others to infringe the '363 Patent in violation of 35 U.S.C. § 271(a), (b) and (c).

16 17. NEC is informed and believes, and based thereon avers, that Harris will continue to
17 infringe the '363 Patent unless enjoined by this Court.

18. NEC has given notice in writing to Harris of its infringement of the '363 Patent at
19 least as early as August 2002.

20 19. NEC is informed and believes, and based thereon avers, that Harris's infringement
21 of the '363 Patent is, has been and continues to be willful and deliberate, and without regard for
22 NEC's rights in the '363 Patent.

23 20. As a direct and proximate result of Harris's infringement of the '363 Patent, NEC
24 has been and continues to be damaged in an amount yet to be determined.

25 21. By reason of the above acts, Harris has caused, is causing, and unless enjoined and
26 restrained by this Court, will continue to cause NEC great and irreparable injury to, among other
27 things, the good will and business reputation of NEC and its business relations with its customers,
28 all of which cannot be adequately compensated or measured monetarily. NEC has no adequate

1 remedy at law. NEC is entitled, in addition to monetary damages, to injunctive relief enjoining
 2 and restraining Harris, and its respective officers, agents, servants, and employees, and all persons
 3 acting in concert with them, and each of them, from further infringement of the '363 Patent.

4 **SECOND COUNT**

5 **(Infringement of the '536 Patent)**

6 22. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
 7 Complaint as though fully set forth herein.

8 23. NEC is informed and believes, and based thereon avers, that Harris has infringed
 9 and continues to infringe the '536 Patent by manufacturing, marketing, using, selling, offering for
 10 sale, distributing, assembling, installing and/or servicing in the United States its products
 11 including, but not limited to, at least the MegaStar®, which embodies, or when used, practices one
 12 or more claims of the '536 Patent and by otherwise contributing to infringement and inducing
 13 others to infringe the '536 Patent in violation of 35 U.S.C. § 271(a), (b) and (c).

14 24. NEC is informed and believes, and based thereon avers, that Harris will continue to
 15 infringe the '536 Patent unless enjoined by this Court.

16 25. NEC has given notice in writing to Harris of its infringement of the '536 Patent at
 17 least as early as August 2002.

18 26. NEC is informed and believes, and based thereon avers, that Harris's infringement
 19 of the '536 Patent is, has been and continues to be willful and deliberate, and without regard for
 20 NEC's rights in the '536 Patent.

21 27. As a direct and proximate result of Harris's infringement of the '536 Patent, NEC
 22 has been and continues to be damaged in an amount yet to be determined.

23 28. By reason of the above acts, Harris has caused, is causing, and unless enjoined and
 24 restrained by this Court, will continue to cause NEC great and irreparable injury to, among other
 25 things, the good will and business reputation of NEC and its business relations with its customers,
 26 all of which cannot be adequately compensated or measured monetarily. NEC has no adequate
 27 remedy at law. NEC is entitled, in addition to monetary damages, to injunctive relief enjoining
 28 and restraining Harris, and its respective officers, agents, servants, and employees, and all persons

1 acting in concert with them, and each of them, from further infringement of the '536 Patent.

2 **THIRD COUNT**

3 **(Infringement of the '142 Patent)**

4 29. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
5 Complaint as though fully set forth herein.

6 30. NEC is informed and believes, and based thereon avers, that Harris has infringed
7 the '142 Patent by manufacturing, marketing, using, selling, offering for sale, distributing,
8 assembling, installing and/or servicing in the United States its products including, but not limited
9 to, at least the MegaStar®, which embodies, or when used, practices one or more claims of the
10 '142 Patent and by otherwise contributing to infringement and inducing others to infringe the '142
11 Patent in violation of 35 U.S.C. § 271(a), (b) and (c).

12 31. NEC has given notice in writing to Harris of its infringement of the '142 Patent at
13 least as early as August 2002.

14 32. NEC is informed and believes, and based thereon avers, that Harris's infringement
15 of the '142 Patent has been willful and deliberate, and without regard for NEC's rights in the '142
16 Patent.

17 33. As a direct and proximate result of Harris's infringement of the '142 Patent, NEC
18 has been damaged in an amount yet to be determined.

19 **FOURTH COUNT**

20 **(Infringement of the '190 Patent)**

21 34. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
22 Complaint as though fully set forth herein.

23 35. NEC is informed and believes, and based thereon avers, that Harris has infringed
24 and continues to infringe the '190 Patent by manufacturing, marketing, using, selling, offering for
25 sale, distributing, assembling, installing and/or servicing in the United States its products
26 including, but not limited to, at least the MegaStar® and MicroStar®, all of which embody, or
27 when used, practice one or more claims of the '190 Patent and by otherwise contributing to
28 infringement and inducing others to infringe the '190 Patent in violation of 35 U.S.C. § 271(a), (b)

1 | and (c).

2 36. NEC is informed and believes, and based thereon avers, that Harris will continue to
3 infringe the '190 Patent unless enjoined by this Court.

4 37. NEC has given notice in writing to Harris of its infringement of the '190 Patent at
5 least as early as August 2002.

6 38. NEC is informed and believes, and based thereon avers, that Harris's infringement
7 of the '190 Patent is, has been and continues to be willful and deliberate, and without regard for
8 NEC's rights in the '190 Patent.

9 39. As a direct and proximate result of Harris's infringement of the '190 Patent, NEC
10 has been and continues to be damaged in an amount yet to be determined.

11 40. By reason of the above acts, Harris has caused, is causing, and unless enjoined and
12 restrained by this Court, will continue to cause NEC great and irreparable injury to, among other
13 things, the good will and business reputation of NEC and its business relations with its customers,
14 all of which cannot be adequately compensated or measured monetarily. NEC has no adequate
15 remedy at law. NEC is entitled, in addition to monetary damages, to injunctive relief enjoining
16 and restraining Harris, and its respective officers, agents, servants, and employees, and all persons
17 acting in concert with them, and each of them, from further infringement of the '190 Patent.

FIFTH COUNT

(Infringement of the '369 Patent)

20 41. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
21 Complaint as though fully set forth herein.

22 42. NEC is informed and believes, and based thereon avers, that Harris has infringed
23 and continues to infringe the '369 Patent by manufacturing, marketing, using, selling, offering for
24 sale, importing, distributing, assembling, installing and/or servicing in the United States its
25 products including, but not limited to, the MicroStar®, the Galaxy™ and TRuepoint™, all of
26 which embody, or when used, practice one or more claims of the '369 Patent and by otherwise
27 contributing to infringement and inducing others to infringe the '369 Patent in violation of 35
28 U.S.C. § 271(a), (b) and (c).

43. NEC is informed and believes, and based thereon avers, that Harris will continue to infringe the '369 Patent unless enjoined by this Court.

3 44. NEC has given notice to Harris of its infringement of the '369 Patent at least as
4 early as December 2003.

5 45. NEC is informed and believes, and based thereon avers, that Harris's infringement
6 of the '369 Patent is, has been and continues to be willful and deliberate, and without regard for
7 NEC's rights in the '369 Patent.

8 46. As a direct and proximate result of Harris's infringement of the '369 Patent, NEC
9 has been and continues to be damaged in an amount yet to be determined.

10 47. By reason of the above acts, Harris has caused, is causing, and unless enjoined and
11 restrained by this Court, will continue to cause NEC great and irreparable injury to, among other
12 things, the good will and business reputation of NEC and its business relations with its customers,
13 all of which cannot be adequately compensated or measured monetarily. NEC has no adequate
14 remedy at law. NEC is entitled, in addition to monetary damages, to injunctive relief enjoining
15 and restraining Harris, and its respective officers, agents, servants, and employees, and all persons
16 acting in concert with them, and each of them, from further infringement of the '369 Patent.

SIXTH COUNT

(Infringement of the '488 Patent)

19 48. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
20 Complaint as though fully set forth herein.

21 49. NEC is informed and believes, and based thereon avers, that Harris has infringed
22 and continues to infringe the '488 Patent by manufacturing, marketing, using, selling, offering for
23 sale, distributing, assembling, installing and/or servicing in the United States its products
24 including, but not limited to, at least the MegaStar®, which embodies, or when used, practices one
25 or more claims of the '488 Patent and by otherwise contributing to infringement and inducing
26 others to infringe the '488 Patent in violation of 35 U.S.C. § 271(a), (b) and (c).

27 50. NEC is informed and believes, and based thereon avers, that Harris will continue to
28 infringe the '488 Patent unless enjoined by this Court.

1 51. NEC has given notice in writing to Harris of its infringement of the '488 Patent at
2 least as early as August 2002.

3 52. NEC is informed and believes, and based thereon avers, that Harris's infringement
4 of the '488 Patent is, has been and continues to be willful and deliberate, and without regard for
5 NEC's rights in the '488 Patent.

6 53. As a direct and proximate result of Harris's infringement of the '488 Patent, NEC
7 has been and continues to be damaged in an amount yet to be determined.

8 54. By reason of the above acts, Harris has caused, is causing, and unless enjoined and
9 restrained by this Court, will continue to cause NEC great and irreparable injury to, among other
10 things, the good will and business reputation of NEC and its business relations with its customers,
11 all of which cannot be adequately compensated or measured monetarily. NEC has no adequate
12 remedy at law. NEC is entitled, in addition to monetary damages, to injunctive relief enjoining
13 and restraining Harris, and its respective officers, agents, servants, and employees, and all persons
14 acting in concert with them, and each of them, from further infringement of the '488 Patent.

SEVENTH COUNT

(Infringement of the '828 Patent)

17 55. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
18 Complaint as though fully set forth herein.

19 56. NEC is informed and believes, and based thereon avers, that Harris has infringed
20 and continues to infringe the '828 Patent by manufacturing, marketing, using, selling, offering for
21 sale, distributing, assembling, installing and/or servicing in the United States its products
22 including, but not limited to, at least the Constellation®, which embodies, or when used, practices
23 one or more claims of the '828 Patent and by otherwise contributing to infringement and inducing
24 others to infringe the '828 Patent in violation of 35 U.S.C. § 271(a), (b) and (c).

25 57. NEC is informed and believes, and based thereon avers, that Harris will continue to
26 infringe the '828 Patent unless enjoined by this Court.

27 58. NEC has given notice in writing to Harris of its infringement of the '828 Patent at
28 least as early as July 2004.

1 59. NEC is informed and believes, and based thereon avers, that Harris's infringement
2 of the '828 Patent is, has been and continues to be willful and deliberate, and without regard for
3 NEC's rights in the '828 Patent.

4 60. As a direct and proximate result of Harris's infringement of the '828 Patent, NEC
5 has been and continues to be damaged in an amount yet to be determined.

6 61. By reason of the above acts, Harris has caused, is causing, and unless enjoined and
7 restrained by this Court, will continue to cause NEC great and irreparable injury to, among other
8 things, the good will and business reputation of NEC and its business relations with its customers,
9 all of which cannot be adequately compensated or measured monetarily. NEC has no adequate
10 remedy at law. NEC is entitled, in addition to monetary damages, to injunctive relief enjoining
11 and restraining Harris, and its respective officers, agents, servants, and employees, and all persons
12 acting in concert with them, and each of them, from further infringement of the '828 Patent.

EIGHTH COUNT

(Declaratory Judgment re: the '965 Patent)

15 62. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
16 Complaint as though fully set forth herein.

17 63. This is a claim against Harris for a declaratory judgment that the '965 Patent has
18 not been and is not infringed by NEC and that the '965 Patent is invalid.

19 64. NEC is informed and believes, and based thereon avers, that Harris is the owner of
20 the '965 Patent.

21 65. During the course of licensing negotiations between NEC and Harris in 2003 and
22 2004, Harris has alleged that NEC's products have infringed and are infringing the '965 Patent.
23 Harris's statements and actions have created on the part of NEC a real apprehension and belief that
24 NEC imminently will be faced with an infringement suit if it continues to manufacture and/or sell
25 the products claimed by Harris to infringe the '965 Patent.

26 66. Accordingly, a valid and justifiable controversy has arisen and exists between NEC
27 and Harris. NEC desires a judicial determination and declaration of the respective rights and
28 duties of the parties herein in accordance with NEC's foregoing contentions. Such a

1 determination and declaration are necessary and appropriate at this time in order that the parties
2 may ascertain their respective rights and duties regarding the validity, enforceability and
3 infringement of the '965 Patent.

4 67. NEC has not infringed and is not infringing the claims of the '965 Patent.

5 68. The '965 Patent is invalid for failure to meet the conditions for patentability
6 specified in 35 U.S.C. § 101 *et seq.*

7 69. NEC requests a judgment declaring that NEC has not infringed and is not
8 infringing the '965 Patent, and declaring the '965 Patent invalid and unenforceable.

NINTH COUNT

(Declaratory Judgment re: the '277 Patent)

11 70. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
12 Complaint as though fully set forth herein.

13 71. This is a claim against Harris for a declaratory judgment that the '277 Patent has
14 not been and is not infringed by NEC and that the '277 Patent is invalid.

15 72. NEC is informed and believes, and based thereon avers, that Harris is the owner of
16 the '277 Patent.

17 73. During the course of licensing negotiations between NEC and Harris in 2003 and
18 2004, Harris has alleged that NEC's products have infringed and are infringing the '277 Patent.
19 Harris's statements and actions have created on the part of NEC a real apprehension and belief that
20 NEC imminently will be faced with an infringement suit if it continues to manufacture and/or sell
21 the products claimed by Harris to infringe the '277 Patent.

22 74. Accordingly, a valid and justifiable controversy has arisen and exists between NEC
23 and Harris. NEC desires a judicial determination and declaration of the respective rights and
24 duties of the parties herein in accordance with NEC's foregoing contentions. Such a
25 determination and declaration is necessary and appropriate at this time in order that the parties
26 may ascertain their respective rights and duties regarding the validity, enforceability and
27 infringement of the '277 Patent.

28 | 75. NEC has not infringed and is not infringing the claims of the '277 Patent.

1 76. The '277 Patent is invalid for failure to meet the conditions for patentability
2 specified in 35 U.S.C. § 101 *et seq.*

3 77. NEC requests a judgment declaring that NEC has not infringed and is not
4 infringing the '277 Patent, and declaring the '277 Patent invalid and unenforceable.

TENTH COUNT

(Declaratory Judgment re: the '646 Patent)

7 78. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this
8 Complaint as though fully set forth herein.

9 79. This is a claim against Harris for a declaratory judgment that the '646 Patent has
10 not been and is not infringed by NEC and that the '646 Patent is invalid.

11 80. NEC is informed and believes, and based thereon avers, that Harris is the owner of
12 the '646 Patent.

13 81. During the course of licensing negotiations between NEC and Harris in 2003 and
14 2004, Harris has alleged that NEC's products have infringed and are infringing the '646 Patent.
15 Harris's statements and actions have created on the part of NEC a real apprehension and belief that
16 NEC imminently will be faced with an infringement suit if it continues to manufacture and/or sell
17 the products claimed by Harris to infringe the '646 Patent.

18 82. Accordingly, a valid and justifiable controversy has arisen and exists between NEC
19 and Harris. NEC desires a judicial determination and declaration of the respective rights and
20 duties of the parties herein in accordance with NEC's foregoing contentions. Such a
21 determination and declaration is necessary and appropriate at this time in order that the parties
22 may ascertain their respective rights and duties regarding the validity, enforceability and
23 infringement of the '646 Patent.

83. NEC has not infringed and is not infringing the claims of the '646 Patent.

25 84. The '646 Patent is invalid for failure to meet the conditions for patentability
26 specified in 35 U.S.C. § 101 *et seq.*

27 85. NEC requests a judgment declaring that NEC has not infringed and is not
28 infringing the '646 Patent, and declaring the '646 Patent invalid and unenforceable.

ELEVENTH COUNT

(Declaratory Judgment re: the '699 Patent)

86. NEC incorporates by reference the allegations set forth in Paragraphs 1-14 of this Complaint as though fully set forth herein.

87. This is a claim against Harris for a declaratory judgment that the '699 Patent has not been and is not infringed by NEC and that the '699 Patent is invalid.

88. NEC is informed and believes, and based thereon avers, that Harris is the owner of the '699 Patent.

9 89. During the course of licensing negotiations between NEC and Harris in 2003 and
10 2004, Harris has alleged that NEC's products have infringed and are infringing the '699 Patent.
11 Harris's statements and actions have created on the part of NEC a real apprehension and belief that
12 NEC imminently will be faced with an infringement suit if it continues to manufacture and/or sell
13 the products claimed by Harris to infringe the '699 Patent.

14 90. Accordingly, a valid and justifiable controversy has arisen and exists between NEC
15 and Harris. NEC desires a judicial determination and declaration of the respective rights and
16 duties of the parties herein in accordance with NEC's foregoing contentions. Such a
17 determination and declaration is necessary and appropriate at this time in order that the parties
18 may ascertain their respective rights and duties regarding the validity, enforceability and
19 infringement of the '699 Patent.

91. NEC has not infringed and is not infringing the claims of the '699 Patent.

21 92. The '699 Patent is invalid for failure to meet the conditions for patentability
22 specified in 35 U.S.C. § 101 *et seq.*

23 93. NEC requests a judgment declaring that NEC has not infringed and is not
24 infringing the '699 Patent, and declaring the '699 Patent invalid and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, NEC Corporation requests that this Court:

27 a) Declare the '363, '536, '142, '190, '369, '488 and '828 Patents to be valid and
28 enforceable;

- 1 b) Declare that Harris infringes and/or has infringed the '363, '536, '142, '190, '369,
2 '488 and '828 Patents;
- 3 c) Declare that Harris's infringement of the '363, '536, '142, '190, '369, '488 and
4 '828 Patents (i) with respect to the '363, '536, '190, '369, '488 and '828 Patents, has been and
5 continues to be willful and deliberate, and (ii) with respect to the '142 Patent, was willful and
6 deliberate;
- 7 d) Award NEC a permanent injunction pursuant to 35 U.S.C. § 283 enjoining Harris,
8 its officers, agents, servants, employees, successors, assigns and all other persons acting in concert
9 or participation with them, from further infringement of the '363, '536, '190, '369, '488 and '828
10 patents;
- 11 e) Award NEC damages from Harris to compensate NEC for Harris's infringement,
12 including preliminary and post-judgment interests and cost, pursuant to 35 U.S.C. § 284, first
13 paragraph;
- 14 f) Award NEC treble damages based on the willfulness of Harris's infringement,
15 pursuant to 35 U.S.C. § 284, second paragraph;
- 16 g) Declare the '965, '277, '646 and '699 patents to be invalid and unenforceable;
- 17 h) Declare that NEC does not infringe the '965, '277, '646 and '699 patents;
- 18 i) Declare this case to be exceptional and award NEC its reasonable attorney fees,
19 disbursements, and costs in accordance with the provisions of law, including, but not limited to 35
20 U.S.C. § 285; and
- 21 j) Award NEC any other relief as this Court deems just and proper.

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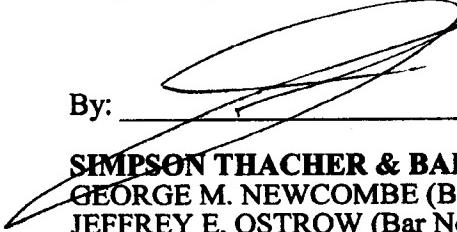
1 **DEMAND FOR JURY TRIAL**
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4 **JURY DEMAND:** NEC requests a trial by jury on all issues so triable.
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7 Dated: September 3, 2004
8
9

10 Respectfully submitted,
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12 By: _____
13

14 
15 **SIMPSON THACHER & BARTLETT LLP**
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32 Attorneys for NEC Corporation
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CIVIL LOCAL RULE 3-16 CERTIFICATION

Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

NEC USA, Inc., a wholly owned subsidiary of Plaintiff NEC Corporation.
NEC America, Inc., a wholly owned subsidiary of NEC USA, Inc.

Dated: September 3, 2004

By

~~SIMPSON THACHER & BARTLETT LLP~~
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